

IN THE

MAR 26 1973

Supreme Court of the United States

OCTOBER TERM, 1972.

Nos. 72-694, 72-753, 72-791, 72-929

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,  
*Appellants,*

*vs.*

EWALD B. NYQUIST, ETC., ET AL.,

*Appellees.*

WARREN M. ANDERSON, AS MAJORITY LEADER AND PRESIDENT PRO  
TEM OF THE NEW YORK STATE SENATE,

*vs.*

*Appellant,*

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,  
*Appellees.*

EWALD B. NYQUIST, ETC., ET AL.,

*vs.*

*Appellants,*

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,  
*Appellees.*

PRISCILLA L. CHERRY, ET AL.,

*vs.*

*Appellants,*

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL.,  
*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

**MOTION FOR LEAVE TO FILE BRIEF AS  
AMICUS CURIAE.**

Brief  
Supreme Court, U.S.  
FILED

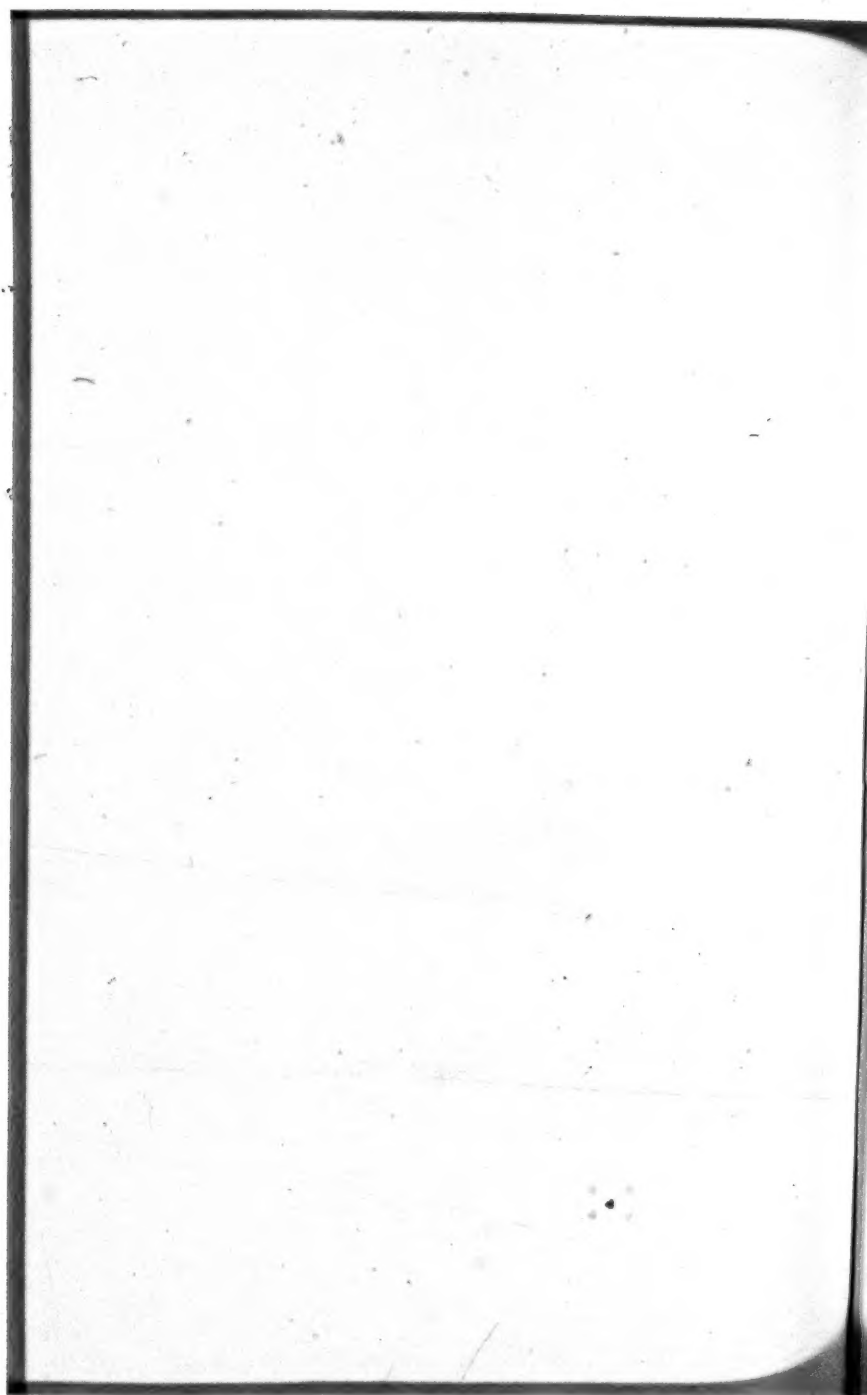
APR 2 1973

MICHAEL RODAK, JR., CLERK

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THIS FORM DOES NOT SHOW THE INFORMATION, SEE SECTION II, PAGE 1 OF INSTRUCTIONS.



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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
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## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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Now comes Lawrence E. Klinger, by his undersigned attorneys, and respectfully applies for leave to file a brief as *amicus curiae* in the above-captioned appeals pursuant to Rule 42(3), and in support of his application states:

1. The nature of the applicant's interest in this cause is described in his affidavit that is attached hereto and made a part hereof as Exhibit "A".
2. As set forth in the affidavit, Lawrence E. Klinger is petitioner-appellant in the case of *People ex rel. Klinger v. Howlett* now pending on appeal before the Illinois Supreme Court (Illinois Supreme Court Docket No. 45419); the Illinois statute providing assistance to low income families in the *Klinger* case is closely similar to the New York legislation at issue in the instant case.
3. A full evidentiary trial was held in the Circuit Court of Cook County in the *Klinger* case; extensive evidence was adduced to demonstrate, and the trial court specifically found, (a) that a severe emergency now exists in inner-city public schools in Illinois because of the failure of such schools to provide lower income children with a basic education, (b) that nonpublic schools in such areas constitute the only alternative now available to alleviate the crisis and meet the educational needs of lower income children, and (c) that inner-city nonpublic schools could accept many more pupils if more funds were made available now to enable low income parents to enroll their children in such schools. The trial court nonetheless held the Illinois Low Income Families Act unconstitutional, on the ground that it violated the "advancement of religion" criterion of *Lemon v. Kurtzman* and its companion cases, 403 U. S. 602 (1971), and the decision has been appealed to the Illinois Supreme Court.
4. The instant appeals are before this Court on a truncated record consisting almost entirely of pleadings; there was no evidentiary trial below. It is thus believed that the parties will not adequately brief and argue the important First Amendment issues posed by the legislation in question. In light of the evidentiary record and

extensive factual findings of the Illinois trial court in the *Klinger* case, an *amicus* brief on behalf of Klinger in the instant appeals will be of significant aid to the Court in its task of considering and deciding the issues with the benefit of all information, experience and illumination obtainable.

5. Forty printed copies of the proposed *amicus* brief of Lawrence E. Klinger are being lodged with the Clerk contemporaneously with this motion.

Respectfully submitted,

DON H. REUBEN,  
LAWRENCE GUNNELS,  
JAMES C. MUNSON,  
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130 East Randolph Drive,  
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*Attorneys for Lawrence  
E. Klinger.*

Of Counsel:

KIRKLAND & ELLIS,  
Chicago, Illinois.

March 23, 1973.

## EXHIBIT A.

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.

## AFFIDAVIT.

LAWRENCE E. KLINGER, being first duly sworn on oath, deposes and says:

1. He is a citizen, taxpayer, voter and real property owner residing in the City of Chicago, County of Cook and State of Illinois. Affiant and his wife, Ellen M. Klinger, are the parents of three school age children. One of said children attends a nonpublic secondary school in the City of Chicago, and two attend a nonpublic elementary school in the City of Chicago. Affiant is also Chairman of the School Board for the Catholic Archdiocese of Chicago which comprises both Cook and Lake Counties, Illinois.

2. Affiant is the Petitioner in a *mandamus* case now pending on appeal before the Illinois Supreme Court (*People ex rel. Klinger v. Howlett*, Ill. Supreme Court Docket No. 45419). Affiant instituted that case to sustain the validity under the United States Constitution of certain Illinois statutes granting financial assistance to children attending nonpublic schools. An evidentiary trial was held in the Circuit Court of Cook County and the case is before the Illinois Supreme Court on a full trial record.

3. One of the Illinois Statutes, entitled the "Nonpublic State Parental Grant Plan for Children of Low Income Families Act" (Ill. Rev. Stat., Ch. 122, §§ 1001-1014) is substantially similar to Section 2 of Chapter 414 of the 1972 New York Laws, entitled the "New York Elementary and Secondary Education Opportunity Program", the

validity of which is being contested in the instant case. In view of this similarity, Affiant is vitally interested in this case and believes that an *amicus* brief will be of significant assistance to the Court in considering and determining the issues presented.

4. Affiant's counsel has requested the written consent of all parties to this litigation to file a brief *amicus curiae*, and such consent was not granted.

/s/ LAWRENCE E. KLINGER,  
Lawrence E. Klinger.

Subscribed and sworn to before me this 20th day of March, 1973.

/s/ DOLORES M. FIGIEL,  
Notary Public.